

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. Sections Affected

R7-2-405
R7-2-407
R7-2-610
R7-2-620

Rulemaking Action

Amend
New Section
Amend
New Section

2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 15-203(A), § 612 of the Federal Individuals with Disabilities Education Act (20 U.S.C. 300.129)

Implementing statutes: A.R.S. §§ 15-203(A)(14), (19), and (22), and 15-214

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 3351, July 25, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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5. An explanation of the rules, including the agency's reasons for initiating the rules:

This rules package addresses several issues related to exceptional students in order to improve services for these students as authorized or required by state or federal laws. The explanations below are detailed in respective order with the numerical order of the rules.

In January 2002, Exceptional Student Services (ESS) and the Arizona Special Education Advisory Panel (SEAP) began a yearlong study of the *Arizona Administrative Code* including R7-2-405. This study was prompted in part by deficiencies noted in the U.S. Department of Education, Office of Special Education Programs (OSEP) review of the Arizona documentation for eligibility for funding under the Individuals with Disabilities Education Act. Arizona was cited by USDOE/OSEP for failure to complete due process hearings and appeals within the required timelines. The recommended changes to R7-2-405 move the state from its current two-tier system of due process hearings to a one-tier system using Administrative Law Judges (ALJs) as the single tier. The two-tier system was a substantial contributor to the problems cited by USDOE/ OSEP. An ad hoc due process work group studied other state systems to determine the benefits and drawbacks of each approach. The final recommendation of the workgroup was to move to the one-tier system using ALJs.

In 1997 the Arizona Legislature required the State Board of Education to adopt rules to promote Braille literacy with specific requirements outlined in A.R.S. § 15-214. The proposed R7-2-407 establishes standards and assistance

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requirements for providing educational services and materials for visually impaired students as required by A.R.S. § 15-214.

The proposed amendments to R7-2-610 are also sought to comply with the statutory requirements of A.R.S. § 15-214 to assure that teachers certified in the education of blind and visually impaired pupils demonstrate competency in Braille.

The addition of R7-2-620 is proposed in response to requests from the hearing impaired community for standards for educational interpreters. These requests were referred to a Certification Advisory Committee established by the State Board of Education in 2000 and a recommendation to provide certification for educational interpreters was forwarded to the Board. The State Board of Education authority to certify educational personnel, however, is limited to that specifically authorized by A.R.S. § 15-203(A)(14). The Board does however have the authority to supervise and control the qualifications of non-teaching school personnel and prescribe standards relating to qualifications under A.R.S. § 15-203(A)(19). The proposed R7-2-620 was developed with input and support from the Arizona School for the Deaf and the Blind, the Arizona Department of Education Exceptional Student Services Division, special education teachers and the Special Education Advisory Panel to the State Board of Education in order to provide quality interpreting services for hearing impaired students through the implementation of required qualifications for educational interpreters.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

The rules as proposed are not expected to have significant, if any, economic impact, however they are expected to have several positive effects for exceptional students, the families of exceptional students and the schools and programs providing services for these students. Moving to a single-tiered process for administrative hearings regarding special education issues provides several positive impacts including a savings of both cost and time on behalf of both the families of exceptional students and the schools providing services to these students. These rules are expected to improve the qualifications of individuals providing assistance to visually impaired students and hearing impaired students by establishing qualifications for Braille literacy for teachers of the visually impaired and qualifications for educational interpreters for hearing impaired students. In addition, these rules will improve the access of textbooks in alternative formats for visually impaired students.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

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10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: November 3, 2003

Time: 9:00 a.m.

Location: State Board of Education
1535 W. Jefferson, Room 417
Phoenix, AZ 85007

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class or rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 4. SPECIAL EDUCATION

Section

R7-2-405. Due Process Standards Relating to Special Education

R7-2-407. ~~Reserved~~ Special Education Standards and Assistance for Providing Educational Services and Materials for Visually Impaired Students

ARTICLE 6. CERTIFICATION

Section

R7-2-610. Special Education Teaching Certificates

R7-2-620. Qualification Requirements of Professional, Non-Teaching School Personnel

ARTICLE 4. SPECIAL EDUCATION

R7-2-405. Due Process Standards Relating to Special Education

A. Definitions. The following definitions are applicable to this rule:

1. "Impartial hearing officer" or "hearing officer" means ~~a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected; an~~ Administrative Law Judge (ALJ) employed by the Arizona Office of Administrative Hearings (OAH) and assigned to preside at a due process hearing, whose duty is to assure that proper procedures are followed and that the rights of the parties are protected.
2. "Parent" ~~has the meaning found in A.R.S. Title 15, Chapter 7, Article 4, and includes a surrogate parent.~~
3. "Public agency" ~~means the school district, charter school, or state or county agency responsible for providing educational service services to a child.~~
4. ~~2.~~ "State Education Agency" ("SEA") means the Arizona Department of Education, Exceptional Student Services Section Division.

B. The due process procedures specified in this rule apply to all public education agencies dealing with the identification, evaluation, ~~special~~ educational placement of, ~~and~~ or the provision of a free appropriate public education ("FAPE") for children with disabilities.

C. The SEA shall establish procedures concerning:

1. Impartial due process hearings; and
2. Confidentiality and access to student records.

D. An impartial hearing officer shall be:

1. Unbiased – not prejudiced for or against any party in the hearing;
2. Disinterested – not having any personal or professional interest that would conflict with objectivity in the hearing;
3. Independent – may not be an officer, employee, or agent of a public education agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public education agency or the SEA solely because the person is paid by the public education agency to serve as a hearing officer; and;
4. Trained ~~and evaluated~~ annually by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement of, and the provision of FAPE for children with disabilities.

E. Hearing officer qualifications and training.

1. All hearing officers shall participate in all required training ~~and evaluation~~ conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement of, and the provision of FAPE for children with disabilities.
2. ~~All hearing officers shall demonstrate competency by achieving a minimum score of 80% on a criterion-referenced test selected by the SEA.~~
3. ~~A hearing officer shall be an attorney licensed to practice law in the United States, or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar association. A hearing officer shall not have represented a parent in a special education matter during the preceding calendar year and shall not have represented a school district in any matter during the preceding calendar year.~~

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4. ~~An individual shall be removed from the list of eligible hearing officers if, at any time, the individual no longer meets the requirements specified in subsection (D)(1) through (4) and subsection (E)(1) through (3).~~
 2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.
- F. Selection of hearing officers.
1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. The list shall also include the qualifications of each hearing officer.
 2. ~~Three hearing officers shall be selected randomly by the SEA and shall be screened to determine availability and possible bias. Once the SEA has selected 3 hearing officers who are available and show no evidence of bias, the 3 names shall be provided to the public agency and the parent. The public agency and the parent will each have the opportunity to strike 1 name from the list provided. The remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the SEA. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in subsections (D) and (E)(1) through (3). The SEA shall review the evidence submitted and determine the qualifications of the individual. If the SEA determines that the individual is not qualified to serve as the hearing officer, the SEA shall repeat the process and select 3 additional hearing officers to be provided to the parties.~~
 2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.
- G. ~~A parent shall submit a written request for a due process hearing to the public agency. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child until the hearing officer renders a decision, unless the public agency and parent agree. If a parent requests a due process hearing, the public agency shall advise the parents of any free or low-cost legal services available. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.~~
- G. Request for Due Process.
1. A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parent agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available, and provide a copy of the procedural safeguards notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.
 2. If the public education agency requests a due process hearing, such request shall be made on a model form, as noted in (G)(1), and a copy shall be provided to the parent and the SEA.
- H. An impartial due process hearing shall be conducted in accordance with the following procedures:
1. ~~The hearing officer shall hold a preconference meeting to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, and to set the time and dates for the hearing.~~
 1. The hearing officer shall hold a pre-hearing conference, at a location mutually agreed upon by the PEA and the parent, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the times and dates for the hearing.
 2. The hearing officer shall conduct the hearing at a location mutually agreed upon by the PEA and the parent.
 - 2-3. ~~The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, to the end and shall ensure that all parties involved have an opportunity to:~~
 - a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
 - b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
 - c. Produce outside expert witnesses; and
 - d. Be represented by legal counsel and/or accompanied and advised ~~or~~ by individuals with special knowledge or training with respect to the problems of children with disabilities.
 - 3-4. The parent involved in the hearing shall be given the right to:
 - a. Have the child who is the subject of the hearing present;
 - b. Have the hearing conducted in public; and
 - c. Have an interpreter provided by the public education agency.
 - 4-5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent Education Educational Evaluation secured by the parent.

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- a. The hearing officer shall determine whether the public education agency has met all relevant requirements of federal and state law, rules, and regulations.
- b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule, ~~as to whether:~~
 - i. ~~The evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;~~
 - ii. ~~The diagnostic profile of the child on which the placement was based is substantially verified;~~
 - iii. ~~The child's rights have been fully observed;~~
 - iv. ~~The placement has been determined to be appropriate to the needs of the child;~~
 - v. ~~The placement of the child in the special education program is with the written consent of the parent.~~

~~5-6.~~ The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be delivered by certified mail or by hand within 45 calendar days after the public education agency's receipt of the request for the hearing. ~~The notification of the hearing officer's decision shall include a statement that either party may appeal the decision to the Office of Administrative Hearings and that such appeal must be filed within 35 calendar days after receipt of the decision. A hearing officer may grant specific extensions of time beyond the 45 calendar days at the request of either party.~~

~~7.~~ The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.

~~6-8.~~ The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.

I. Expedited hearing for disciplinary matters.

1. An expedited hearing for disciplinary matters may be requested ~~concerning long-term suspension or expulsion:~~
 - a. By the parent if the parent disagrees with the determination that the child's behavior was not a manifestation of the child's disability; or
 - b. By the parent if the parent disagrees with any decision regarding placement; ~~or~~ under 34 CFR 300.520-300.528;
or
 - c. By the public education agency if the public education agency maintains that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings.
2. Hearing officers for an expedited hearing shall be assigned by the SEA ~~after review to determine that the hearing officer meets the standards specified in subsection (D)(1) through (4). The strike provisions specified in subsection (F) are not applicable.~~ Office of Administrative Hearings.
3. The expedited hearing shall be conducted and the findings of fact and decision shall be issued within 10 ~~calendar~~ business days from the receipt of the request.

J. Administrative appeal.

1. A final administrative appeal may be obtained through the Office of Administrative Hearings. Requests for appeal shall be submitted in writing through the SEA.
 - a. ~~Such an appeal shall be accepted only if it is initiated within 35 days after the decision of the hearing officer has been received by the party appealing.~~
 - b. ~~The official conducting the review shall:~~
 - i. ~~Examine the entire hearing record;~~
 - ii. ~~Ensure that the procedures at the hearing were consistent with the requirements of due process;~~
 - iii. ~~Seek additional evidence if necessary;~~
 - iv. ~~Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~
 - v. ~~Make findings of fact and a decision on completion of the review;~~
 - vi. ~~Give a copy of the written findings of fact and the decision to the parties.~~
2. ~~The findings of fact and decision of the administrative law judge shall be delivered by certified mail or by hand to all parties within 30 calendar days of the receipt of the request for appeal. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.~~
3. ~~The findings of fact and decision of the administrative law judge shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.~~

R7-2-407. Reserved Special Education Standards and Assistance for Providing Educational Services and Materials for Visually Impaired Students

A. All requirements in this Section are in addition to the general special education standards in R7-2-401 for public agencies providing special education.

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B. For the purposes of this rule, the following definitions apply:

1. "Accessible Electronic File" means, until the effective date of a nationally adopted file format, a digital file in a mutually agreed upon electronic file format that has been prepared using a markup language that maintains the structural integrity of the information and can be processed by Braille conversion software. Upon the effective date of a nationally adopted file format, such as the Instructional Materials Accessibility Standard (IMAS), "Accessible Electronic File" shall mean an electronic file conforming to the specifications of the nationally adopted file format, including future technical revisions and versions of this nationally adopted file format.
2. "Individualized Braille literacy assessment" means the Learning Media Assessment or other standardized or individualized assessments that pertain to the child's reading medium.
3. "Non-printed instructional materials" means non-printed textbooks and related core materials, including those that require the availability of electronic equipment in order to be used as a learning resource, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. These materials shall be available to the extent technologically available, and may include software programs, CD-ROMs and internet-based materials.
4. "Printed instructional materials" means textbooks and related printed core materials, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. This may include workbooks, practice tests and tests.
5. "Publisher" means an individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending public schools in Arizona, including an on-line service, a software developer, or a distributor of an electronic textbook.
6. "Specialized format" means Braille, audio or digital text which is exclusively for use by blind or other persons with disabilities.
7. "Structural integrity" means the structure of all parts of the printed instructional material will be kept intact to the extent feasible and as mutually agreed upon by the publisher and the local educational agency. This may include appropriate representation of graphic illustrations.

C. Upon determination of a student having a visual impairment as assessed by a full and initial evaluation defined in R7-2-401(E)(6)(i), a visually impaired student who is determined to be blind as defined by A.R.S. § 15-214(B) shall receive an individualized Braille literacy assessment.

D. Individualized Education Programs (IEP) for Blind students. In addition to the requirements for establishing and implementing an IEP consistent with R7-2-401(F) for a student determined to have a disability, each IEP for a student determined to be "blind" as assessed by R7-2-401(E)(6)(i) and defined by A.R.S. § 15-214(B), shall presume that proficiency in Braille is essential in achieving academic success unless otherwise determined by the IEP team established consistent with the regulations for the most recent reauthorization of the Individuals with Disabilities Education Act (IDEA) and in the manner provided by the most recent reauthorization of the IDEA Act for developing an IEP. An IEP developed under this Section for a student determined to be blind shall include all required provisions of A.R.S. § 15-214(A)(3), including the following:

1. The results of the individualized Braille literacy assessment.
2. The date on which Braille instruction will begin, the methods to be used and the frequency and duration of the Braille instruction.
3. The level of competency expected to be achieved within specified time-frames and the objective measures to be used for evaluation.
4. The Braille materials and equipment necessary to achieve the stated expected competency gains, including ordering instructional materials to achieve the I.E.P.-stated goals.
5. The rationale for not providing Braille instruction if Braille is not determined to be an appropriate medium by the IEP team and is not included in the IEP.

E. The Arizona Department of Education shall designate a central repository for publishers to, upon request, provide accessible electronic files for instructional materials used by public schools in Arizona as defined in subsection (B)(1). The central repository shall be responsible for maintaining a complete list of available accessible electronic files for instructional materials and instructional materials in specialized formats, processing requests from PEAs for instructional materials in specialized formats and providing access to these materials in specialized formats to schools throughout Arizona that are providing services to blind or other students with disabilities.

1. Upon receipt of a written request certifying to the requirements set forth in subsections (a) through (c) publishers shall deliver to the repository, at no additional cost and consistent with the time-frame for providing materials for students without disabilities, accessible electronic files for printed instructional materials and non-printed instructional materials. Certification shall include all of the following:
 - a. The PEA purchased a copy of the printed instructional material or non-printed instructional material for use by a student who is blind or has a visual impairment in a course which the student is attending or registered to attend;

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- b. The student who will utilize the instructional materials in a specialized format has an IEP stating that such materials and/or equipment are necessary for the student to achieve stated expected competency gains; and
- c. The instructional materials are for use by the student in connection with a course in which he/she is enrolled, as verified by the person overseeing the education of students who are blind or visually impaired.
- 2. A PEA may access the materials maintained by the central repository, upon written request, for instructional use with a student with a visual impairment, as identified by R7-2-401(E)(6)(i), who requires the use of instructional materials in a specialized format pursuant to the student's IEP.
- 3. Nothing in this Section shall be construed to prohibit the AIRC from assisting a student with a disability by using the electronic format version of instructional material provided pursuant to this Section solely to transcribe or arrange for the transcription of the printed instructional material into Braille or large print. In the event a Braille transcription is made, the central repository has the right to share the Braille copy of the printed instructional material with other eligible students with disabilities. The PEA will be required to return the specialized format version of the instructional material to the central repository when the student no longer needs the instructional material. The central repository may share the copies of the specialized format of the instructional material with other PEAs who have met the requirements of subsections (B) and (D) of this Section to provide services to students who require such services pursuant to R7-2-401(F)(5).

ARTICLE 6. CERTIFICATION

R7-2-610. Special Education Teaching Certificates

- A. Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-617.
- B. Terms used in this Section are defined in A.R.S. § 15-761.
- C. Provisional Cross-Categorical Special Education Certificate -- grades K-12
 - 1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 - 2. The holder is qualified to teach students with mild to moderate mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments.
 - 3. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in special education from an accredited institution, which included courses in mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments; or
 - ii. Forty-five semester hours of education courses which teach the standards described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum with students representing at least three of the five disability areas. Special education courses shall include survey of exceptional students; teaching methodologies and strategies for students with disabilities; foundations course in mild to moderate mental retardation, learning disability, emotional disabilities, and physical/health impairment; and diagnosis and assessment of mild disabilities. Two years of verified teaching experience in special education in grades K-12 may substitute for the eight semester hours of practicum; or
 - iii. A valid cross-categorical special education certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the cross-categorical special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint clearance card.
- D. Standard Cross-Categorical Special Education Certificate -- grades K-12
 - 1. The certificate is valid for six years.
 - 2. The holder is qualified to teach students with mild to moderate mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments.
 - 3. The requirements are:
 - a. Qualification for the provisional cross-categorical Special Education certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- E. Provisional Specialized Special Education Certificate -- grades K-12
 - 1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 - 2. The holder is qualified to teach students with mental retardation, emotional disability, specific learning disability, orthopedic impairments or other health impairments, as specified on the certificate.
 - 3. The requirements are:
 - a. A Bachelor's degree;

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- b. One of the following:
 - i. Completion of a teacher preparation program in the specified area of special education from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum in the designated area of disability. Special education courses shall include survey of exceptional students; teaching methodologies for students with disabilities; foundations of instruction in the designated area of disability; and diagnosis and assessment of disabilities. Two years of verified teaching experience in the area of disability in grades K-12 may be substituted for the eight semester hours of practicum; or
 - iii. A valid special education certificate in the specified area from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the specified disability special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint clearance card.
- F. Standard Specialized Special Education Certificate -- grades K-12**
- 1. The certificate is valid for six years.
 - 2. The holder is qualified to teach students with mental retardation, emotional disability, specific learning disability, orthopedic impairments or other health impairments, as specified on the certificate.
 - 3. The requirements are:
 - a. Qualification for the provisional Special Education certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- G. Provisional Severely and Profoundly Disabled Certificate -- grades K-12**
- 1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 - 2. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in severely and profoundly disabled education from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with severe and profound disabilities, foundations of instruction of students with severe and profound disabilities, and diagnostic and assessment procedures for students with severe and profound disabilities. Two years of verified teaching experience with students in grades Prekindergarten-12 who are severely and profoundly disabled may be substituted for the eight semester hours of practicum; or
 - iii. A valid Severely and Profoundly Disabled certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the severely and profoundly disabled special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint card.
- H. Standard Severely and Profoundly Disabled Certificate -- grades K-12**
- 1. The certificate is valid for six years.
 - 2. The requirements are:
 - a. Qualification for the provisional severely and profoundly disabled certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- I. Provisional Hearing Impaired Certificate -- grades K-12**
- 1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 - 2. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in hearing impaired education from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the hearing impaired and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with hearing impairment, foundations of instruction of students with hearing impairment, and diagnostic and assessment procedures for the hearing impaired. Two years of verified teaching experi-

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- ence in the area of hearing impaired in grades Prekindergarten-12 may be substituted for the eight semester hours of practicum; or
- iii. A valid hearing impaired certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the hearing impaired special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint clearance card.
- J. Standard Hearing Impaired Certificate -- grades K-12**
1. The certificate is valid for six years.
 2. The requirements are:
 - a. Qualification for the provisional hearing impaired certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- K. Provisional Visually Impaired Certificate -- grades K-12**
1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 2. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in visual impairment from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the visually impaired and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with visual impairment, foundations of instruction of students with visual impairment, and diagnostic and assessment procedures for the visually impaired. Two years of verified teaching experience in the area of visually impaired in grades Prekindergarten-12 may be substituted for the eight semester hours of practicum; or
 - iii. A valid visually impaired special education certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the visually impaired special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. Demonstration of competency in Braille through one of the following:
 - i. A passing score on the original version of the National Library of Congress certification exam; or
 - ii. A valid certificate for a literary Braille transcriber issued by the National Library of Congress; or
 - iii. A passing score on a Braille exam administered by another state; or
 - iv. A passing score on the Braille exam developed and administered by the University of Arizona which shall be administered at least twice each year. Individuals who take this test and are not students at the University of Arizona may be assessed a fee.
 - f. A valid Class 1 or Class 2 fingerprint clearance card.
- L. Standard Visually Impaired Certificate -- grades K-12**
1. The certificate is valid for six years.
 2. The requirements are:
 - a. Qualifications for the provisional visually impaired certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- M. Provisional Speech and Language Impaired Certificate -- grades K-12**
1. This certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 2. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in speech and language special education from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 30 semester hours of special education courses for the speech impaired. Special education courses shall include survey of exceptional students, teaching methodologies for students with speech impairment, foundations of instruction of students with speech impairment, diagnostic and assessment procedures for the speech impaired, and a minimum of 200-clock hours of supervised clinical practice in providing speech and language impairment services. All clinical practice clock hours shall be supervised by an American Speech and Language Association-certified pathologist or by a state-certified speech and language therapist; or

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- iii. A valid Speech and Language Impaired special education certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the speech and language impaired special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint clearance card.
- N. Standard Speech and Language Impaired Certificate -- grades K-12
- 1. The certificate is valid for six years.
 - 2. The requirements are:
 - a. Qualification for the provisional speech and language impaired certificate;
 - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.
- O. Provisional Early Childhood Special Education Certificate -- Birth to five years
- 1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
 - 2. The requirements are:
 - a. A Bachelor's degree;
 - b. One of the following:
 - i. Completion of a teacher preparation program in early childhood special education from an accredited institution; or
 - ii. Forty-five semester hours of education courses which teach the standards described in R7-2-602, including child development and learning, language development, social and emotional development, curriculum development and implementation, and assessment and evaluation, early childhood special education, and eight semester hours of practicum in early childhood special education. Two years of verified teaching experience in the area of early childhood special education may be substituted for the eight semester hours of practicum; or
 - iii. A valid early childhood special education certificate from another state.
 - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
 - d. A passing score on the early childhood special education portion of the Arizona Teacher Proficiency Assessment; and
 - e. A valid Class 1 or Class 2 fingerprint clearance card.
- P. Standard Early Childhood Special Education Certificate -- Birth to five years
- 1. The certificate is valid for six years.
 - 2. Requirements are:
 - a. Qualify for the provisional early childhood Special Education certificate;
 - b. Passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
 - c. A valid Class 1 or Class 2 fingerprint clearance card.

R7-2-620. Qualification Requirements of Professional, Non-Teaching School Personnel

A. Definitions:

- 1. "Educational Interpreter." For the purposes of this Section, "educational interpreter" means a person trained to translate in sign language for students identified to require such services through an Individualized Education Program (IEP) or a 504 accommodation plan in order to access academic instruction. This does not in any way restrict the provisions of R7-2-401(B)(14) which defines "interpreter" and provides that each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE, nor does it restrict a school district's ability to develop a job description for someone in a position of "educational interpreter" that requires additional job responsibilities.

B. Educational Interpreters for the Hearing Impaired

- 1. Persons employed by or contracting with schools and school districts to provide educational interpreting services for hearing impaired students must meet the following qualifications from and after January 1, 2005:
 - a. Have a high school diploma or GED;
 - b. Hold a valid fingerprint clearance card, and
 - c. Show proficiency in interpreting skills through one of the following:
 - i. A minimum passing score of 3.5 or higher on the Educational Interpreter Performance Assessment (EIPA),
or
 - ii. Hold a valid Certificate of Interpretation (CI) and/or Certificate of Transliteration (CT) from the Registry of Interpreters for the Deaf (RID), or
 - iii. Hold a valid certificate from the National Association of the Deaf (NAD) at level 3 or higher.
- 2. If a public education agency (PEA) is unable to find an individual meeting the above qualifications, the PEA may hire an individual with lesser qualifications, but the PEA is required to provide a professional development plan for the individual they employ to provide educational interpreting services. This professional development plan must include the following:

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- a. Proof of at least twenty-four hours of training in interpreting each year that a valid certification is not held or EIPA passing score is not attained, and
- b. Documentation of a plan for the individual to meet the required qualifications within three years of employment. If the qualifications are not attained within three years, but progress toward attainment is demonstrated, the plan shall be modified to include an intensive program for up to one year to meet the provisions of subsection (B)(1).
3. An individual employed under the provisions of subsection (2) of this rule must also have the following:
 - a. A valid fingerprint clearance card, and
 - b. A high school diploma or GED.
- C. Compliance with these rules will be reviewed at the same time as a PEA is monitored for compliance with the requirements of the Individuals with Disabilities Education Act (IDEA).

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

R18-2-602
R18-2-1501
R18-2-1502
R18-2-1503
R18-2-1504
R18-2-1505
R18-2-1506
R18-2-1507
R18-2-1508
R18-2-1509
R18-2-1510
R18-2-1511
R18-2-1511
R18-2-1512
R18-2-1512
R18-2-1513
R18-2-1513
R18-2-1514
R18-2-1514
R18-2-1514
R18-2-1515

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section
ReNUMBER
Amend
ReNUMBER
Amend
ReNUMBER
Amend
Repeal
ReNUMBER
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 49-414, 49-414.01, and 49-425

Implementing statute: A.R.S. § 49-501

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 3386, August 1, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kevin Force

Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-4480 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

Fax: (602) 771-2366

5. An explanation of the rules, including the agency's reasons for initiating the rules:

Summary. This proposed rule would amend Arizona's existing open burning and prescribed burning rules to make them conform to EPA requirements for states' Regional Haze State Implementation Plans. In addition, these amendments make other technical changes, including improvements of the rules' clarity, conciseness, and understandability.

Regional Haze SIP Requirements. The proposed revisions to R18-2-602 and Article 15 will allow the state's Regional Haze SIP that Arizona is required to submit to EPA by December 31, 2003, to meet the approvability test. (40 CFR 51.309(c)) The specific requirements for state regional haze SIPs are found at 40 CFR 51.308 and 51.309.

Under 40 CFR 51.309(d)(6), *Programs Related to Fire*, the plan must provide for:

“(i) Documentation that all Federal, State, and private prescribed fire programs within the State evaluate and address the degree visibility impairment from smoke in their planning and application. In addition the plan must include smoke management programs that include all necessary components including, but not limited to, actions to minimize emissions, evaluation of smoke dispersion, alternatives to fire, public notification, air quality monitoring, surveillance and enforcement, and program evaluation.

(ii) A statewide inventory and emissions tracking system (spatial and temporal) of VOC, NOX, elemental and organic carbon, and fine particle emissions from fire. In reporting and tracking emissions from fire from within the State, States may use information from regional data-gathering and tracking initiatives.

(iii) Identification and removal wherever feasible of any administrative barriers to the use of alternatives to burning in Federal, State, and private prescribed fire programs within the State.

(iv) Enhanced smoke management programs for fire that consider visibility effects, not only health and nuisance objectives, and that are based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.

(v) Establishment of annual emission goals for fire, excluding wildfire, that will minimize emission increases from fire to the maximum extent feasible and that are established in cooperation with States, tribes, Federal land management agencies, and private entities.”

In early 2002, ADEQ's Regional Haze stakeholders established a Fire Emissions Work Group (FEWG) to discuss visibility issues related to fire emissions and make recommendations to ADEQ for the Regional Haze SIP. Fifteen stakeholders, representing public and private entities in geographically diverse areas of the state, agreed to participate in the work group.

The FEWG held a series of meetings from June 2002 through May 2003 to learn about and discuss options for all categories of burning activities that occur in the state. The draft rules were presented at public workshops in Casa Grande, Flagstaff, Phoenix, Show Low, and Yuma from April 10-17, 2003. The extensive meeting schedule was proposed by work group members in order to provide local access to the rulemaking process and obtain early input from sectors of the community who would be most affected by these rules. The current proposed rule is a joint effort of ADEQ and the FEWG based on input received at those public meetings and the decisions of the FEWG.

Structure of open burning authority in Arizona. A.R.S. § 49-425 provides ADEQ with general air quality rule authority, including authority to promulgate rules for open burning permits. It requires the Director to adopt rules determined necessary and feasible “to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state.” A.R.S. § 49-501 adds related authority by excepting from its provisions those open outdoor fires that are permitted by any rule issued pursuant to A.R.S. § 49-425 (see subsections (C)(5) and in (E)) by allowing the director to delegate authority to issue open burn permits to a “county, city, town, or fire district.” A.R.S. § 49-414.01(A) sets forth regional haze goals and requires the Director to submit a plan to EPA that addresses “programs related to emissions from fire sources” “as necessary to submit an approvable plan” and authorizes rules necessary for the revisions to the state implementation that address regional haze.”

R18-2-602 and a related statute, A.R.S. § 49-501, govern open burning activities under ADEQ's jurisdiction. A.R.S. § 49-501 was last amended in 1997. In 1996, the delegation subsection (E) was added. In 1994, the general permit for household waste was added. Based on the statute and rule, ADEQ published guidelines on open burning in February, 1997.

Proposed Open Burning Revisions

At the public meetings mentioned above, the three frequent topics for comment were: time-of-day burning restrictions in R18-2-602(D)(3), permitting requirements for air curtain destructors, sometimes called air curtain incinerators, and the relationship of the state rule to counties that have independent authority to permit fires.

Compared to the existing rule, this proposed rule contains a number of additional definitions in a separate subsection. ADEQ has proposed definitions for various categories of open burning, such as agricultural, construction, and residential. In addition, there are new definitions for “delegated authority,” “independent authority to permit fires,” and “prohibited materials.” Prohibited materials were previously described in a guidance document. By placing all of the necessary material from the guidelines in the proposed rule, ADEQ intends that this amended R18-2-602 will replace the guidelines as of the effective date of the rule.

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The proposed rule also clarifies which open burning activities require open burning permits and those that are exempt from a permit. The proposed rule contains a more complete list of information that is required to be in the permit. This is both for more efficient permit administration, and to comply with various aspects of the regional haze rule.

ADEQ considered exempting certain fires using air curtain destructors from the open burn permit requirement in order to remove an administrative barrier to this type of burning, as required by the Regional Haze Rule (see 40 CFR 51.309(d)(6)(iii)). Air curtain destructors (ACDs) are basically incinerators with high velocity air blown across and into the upper portion of the combustion chamber. This curtain of air traps particulates (smoke) and oxygenates the chamber, resulting in better combustion and less smoke. After reviewing two studies, ADEQ decided that these devices do require oversight and it is appropriate that they be subject to permits under the rule. ADEQ does not view the requirement that ACDs obtain a permit as an administrative barrier. ADEQ also notes that certain air curtain destructors are subject to New Source Performance Standards (see 40 CFR 60, subparts CCCC and DDDD). Studies reviewed by ADEQ relevant to air curtain destructors are listed in item #6 of this preamble.

ADEQ has added language in the proposed rule clarifying that the state rule will not operate in counties with independent authority to permit fires, and has listed the three counties in the definition. This independent authority is derived in part from language in A.R.S. § 49-501(C)(5) specifying that fires permitted pursuant to county rules are excepted from A.R.S. § 49-501. The three counties referenced in the definition all have rules creating permits for open outdoor fires, other than dangerous materials. (see Maricopa County Rule 341; Pima County Rule 17.12.480, et seq.; Pinal County Rule 3-8-700 and 3-8-710.) Pursuant to A.R.S. § 49-501(G) and its current PM10 SIP, Maricopa County prohibits burning of household waste.

The proposed rule also clarifies provisions on burning of dangerous materials and household waste. Finally, new restrictions on permits issued by delegated authorities that minimize the potential for conflict of interest on the part of delegated authorities have been included in proposed subsection (G). First, the proposed rule specifies that a delegated authority may not issue itself open burning permits. Second, the rule proposes to prevent private fire protection providers from conditioning the issuance of open burning permits on the applicant being their customer.

Proposed Prescribed Burning Revisions

State and federal forest and range land make up more than half of the land in Arizona. Despite potential air quality concerns, state and federal land managers (F/SLMs) use fire as a resource management tool on this land for a variety of purposes. Article 15 governs those fires that are set or allowed to burn on these lands in Arizona. The two primary air quality concerns are violations of national ambient air quality standards (NAAQS) for particulates, and visibility impairment. Research indicates that, on average, 90 percent of smoke particles from wildland and prescribed fires are PM10, and 10 percent are PM2.5. Arizona's Prescribed Burning requirements are in Article 15 of the Administrative Code address these air quality concerns, primarily through efforts to ensure the best times for 'burns' and by promoting other techniques to reduce the amount of smoke produced and the effects of that smoke.

A.R.S. § 49-414.01 specifically requires the Director to submit a plan to EPA, and allows ADEQ to promulgate rules addressing programs related to emissions from wildland fire, including prescribed fires and wildfires (see A.R.S. § 49-414.01(A)(7)). The proposed revisions to Article 15 of the Code, which governs the procedures relating to prescribed and wildland fires, will better conform to EPA's regional haze requirements, be more understandable, and facilitate enhanced compliance. Most of the proposed changes to Article 15 directly reflect the mandates of the EPA's regional haze rule requirements, particularly those relating to the collection and recording of burn data, the evaluation of burn programs and setting of annual emission goals. The former structure of the rule remains intact: 1) Annual registration; 2) submittal of a Burn Plan at least 14 days before the burn; 3) a daily Burn Request; and 4) a Burn Accomplishment Form.

Section by Section Explanation of significant proposed changes.

Article 6

R18-2-602 This rule describes the process by which permits may be issued for open burns, and identifies open burning activities which are exempt from the permit requirement.

Article 15

R18-2-1501 This Section lists the definitions applicable to Article 15. In response to the EPA regulation, there are new definitions for "Annual Emissions Goal," and "non-burning alternatives to fire." In addition, "Best Management Practices" has been replaced by "Smoke management techniques" and "Emission reduction techniques," and "Prescribed natural fire" has been replaced by "Wildland fire use."

R18-2-1502 This Section limits the applicability of the rule to state and federal land managers, while excluding Indian Trust lands. The proposed change clarifies that private burners, such as the Nature Conservancy, may also be subject to the Article.

R18-2-1503 This Section describes the process by which land managers annually register their planned burns with ADEQ. The proposed changes incorporate emission reduction techniques and non-

Notices of Proposed Rulemaking

burning alternatives to fire and facilitate the setting of annual emission goals. A new annual period and other clarifying changes are proposed.

- R18-2-1504 This Section requires the details of each burn to be included in the Burn Plan form to be submitted to ADEQ 14 days before requesting permission to ignite. The proposed changes clarify the process and supplement the information related to it.
- R18-2-1505 This Section requires land managers to submit a daily burn request for each day of the burn and describes optional agency response to the request. The proposed changes are primarily clarifying.
- R18-2-1506 This Section describes how the agency will determine whether and how much burning to allow. The proposed changes also add clarifying factors not directly related to regional haze.
- R18-2-1507 This Section requires land managers to report acreage and fuel types burned, the emission reduction and smoke management techniques used, and requires ADEQ to keep records of this information. A subsection has been added for wildfire reporting to allow those fires' emissions to be entered into the regional haze emission tracking system.
- R18-2-1508 This Section describes how land managers shall inform the agency of wildfires and seek permission for wildland burn uses. Clarifications have been proposed based on recent experiences with wildfires.
- R18-2-1509 This Section is proposed to replace the former BMP section and describes Emission Reduction Techniques, many of which were listed previously as BMPs. It requires land managers to use as many as feasible.
- R18-2-1510 This Section is also proposed to replace the former BMP section and describes Smoke Management Techniques, some of which were listed previously as BMPs. It requires land managers to use as many as feasible.
- R18-2-1511 This Section describes how the agency may require land managers to monitor aspects of their prescribed burns and wildland burn uses. The proposed changes are clarifications and minor changes to weather and air quality monitoring.
- R18-2-1512 This Section requires all burn projects to be conducted by personnel trained in prescribed fire and smoke management techniques. The proposed changes are clarifications.
- R18-2-1513 This Section directs the agency to conduct burn-related public awareness programs and make burn information available to the public. The proposed changes attempt to promote regional coordination.
- R18-2-1514 This Section describes how the agency may inspect, verify, and audit burn information, and actions the agency may take regarding enforcement.
- R18-2-1514(former) In a recent five-year review report, ADEQ stated that it would reevaluate the need for this Section. ADEQ is proposing to delete subsection (B) because the changes in R18-2-1503 provide for a more efficient and effective system. Subsection (A) has been moved to R18-2-1511(B).
- R18-2-1515 This Section directs the agency to make its forms and data relating to prescribed burns and wildland burn uses available in an electronic format. The proposed changes are clarifying only.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Use of Air Curtain Destructors for Fuel Reduction, Alan R. Shapiro, United States Department of Agriculture, Forest Service Technology and Development Program (September 2002).

Reducing PM2.5 Emissions Through Technology, Evaluations of the Effectiveness of an Air Curtain Incinerator, Ronald A. Scott, Ronald Babbitt, Emily Lincoln, and Wei Min Hao, USDA Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory, Missoula, MT (October 2002)

Studies available for review at the ADEQ Library, 1110 W. Washington, First Floor, Phoenix, AZ 85007.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. Rule Identification

The rules amended in this rulemaking are R18-2-602, "Unlawful Open Burning," and Article 15, "Forest and Range Management Burns," R18-2-1501 through R18-2-1515.

B. Entities Affected by R18-2-602, "Unlawful Open Burning"

Open burning may be done by many entities for a variety of purposes, such as waste disposal, weed control, site preparation, disease and pest prevention, resource management, training and fire prevention. Unless specifically exempted by this rule, persons setting outdoor fires would have to obtain a permit from ADEQ or a delegated authority, a city or fire district, or one of the three counties with independent authority to issue permits (Maricopa, Pima, Pinal). Persons who might be subject to this proposed rule therefore include: (1) individuals; (2) businesses, such as farms, ranches, orchards, electric generating plants, construction and mines; (3) federal sources, such as military installations; (4) state agencies, such as the Departments of Transportation and Corrections; and, (5) political subdivisions, such as counties, cities, irrigation districts, and fire districts.

ADEQ has delegated authority to issue permits to about 50 fire departments, fire districts and cities or towns located in nine of Arizona's 15 counties. Authority to issue permits in Graham County is delegated to Graham County Health Department, while Maricopa, Pima and Pinal Counties have independent authority to permit fires. ADEQ has jurisdiction to issue permits in areas outside the delegated authorities' jurisdiction in these counties. ADEQ typically issues more than 100 open burning permits annually to a wide variety of permittees, most of which are for burns in Gila and Cochise Counties. Permits for burns in La Paz, Yavapai, Santa Cruz, Apache, Greenlee and Coconino Counties are also common.

The following represents a sampling of the level of permits issued by delegated authorities based on the calendar year 2002. The City of Prescott in Yavapai County issued about 200 permits in 2002, of which the majority was for residential burning. The City of Yuma issued 15 open burning permits, mainly for agriculture. Rural Metro Fire Department, which has jurisdiction outside of the municipalities of Somerton and Yuma, typically issues 300-400 residential open burning permits and 50-60 permits for agriculture in Yuma County. The City of Payson in Gila County issued 146 open burning permits for brush and weeds. Bullhead City in Mohave County annually issues 50-70 open burning permits of which the majority is for residential burning. The 384 open burning permits issued by Graham County Health Department in fiscal year 2003 were all for purposes of weed abatement.

C. Potential Impact of R18-2-602

Much of what previously existed as guidelines in 1997 is being incorporated into R18-2-602. Therefore, the baseline for calculating the proposed rule impacts is the current rule requirements, effective in 1990, and these guidelines. The difference between the combined rule provisions and guidelines, and the implementation of the revised R18-2-602 represents the potential impact.

Because this rulemaking proposes only minor changes and incorporates already existing guidance, ADEQ expects the rule to create minimal actual impact, such as the costs associated with minor changes in recordkeeping, documentation, and reporting requirements. ADEQ and delegated authorities will have to maintain copies of effective permits, as well as prepare annual reports for submission to ADEQ. While some of these changes will generate minimal costs, ADEQ expects the overall benefits to exceed those costs. It should also be noted that ADEQ does not charge fees for open burning permits because most permits are issued in a day or two and it would require minimal administrative effort.

D. Entities Affected by Article 15, "Forest and Range Management Burns"

Since ADEQ has jurisdiction, outside tribal lands, over air pollution resulting from prescribed burning, this proposed rule will impact the following federal and state agencies that do burning: (1) Federal Land Managers (FLMs) involved in burning activities, such as U.S. Forest Service, U.S. Fish and Wildlife Service, National Parks Service, Bureau of Land Management, Bureau of Reclamation, Department of Defense; (2) State Land Managers (SLMs), such as Arizona State Land Department, Arizona Department of Transportation, Arizona Department of Game and Fish, and Parks Department. Additionally, there are entities not actually subject to this rule but who may voluntarily comply with some or all of the rule provisions, such as the Bureau of Indian Affairs, one of the largest burners in Arizona. Also, private land managers, such as The Nature Conservancy, or individuals, might also need to comply with this rule or request assistance from one of the F/SLMs.

Each year, ADEQ receives more than 1,000 daily burn requests from F/SLMs. For example, in calendar year 2002, about 1,400 requests to burn were received, and slightly more than 104,000 acres were burned, which represents about 56 percent of the total acres approved to burn. This figure is approximately equal to the number of acres burned each year for the past ten years (106,429) on federal, state, and tribal lands. The major fuel types burned in 2002 and their relative proportions include: piled ponderosa pine (22%), non-piled ponderosa pine (21%), and natural ponderosa pine (17%). The remaining 40% of fuel types include: natural shrub, non-piled grass and ponderosa pine, natural grass, natural grass and ponderosa pine, non-piled mixed, and other.

For comparison, in 1999, F/SLMs requested nearly 450,000 acres to burn. Although ADEQ approved close to 80 percent of the requested acreage, the actual number of acres burned was about 200,000. The fuel types burned in 1999 were: broadcast slash (32%), ponderosa pine (22%), grass (20%), slash piles (14%), brush (10%), and pinyon juniper (2%). As shown with these two years, proportions, however, vary from one year to another.

Combining acres burned for 1994 through 1999, shows the percentage of acres burned by F/SLMs agencies: U.S. Forest Service (49%), Bureau of Indian Affairs (30%), National Park Service (7%), Bureau of Land Management (7%), U.S. Fish and Wildlife (6%), Arizona State Land Department (1%), and other (1%).

E. Potential Impact of Article 15

Because this rule involves forest and range management burning by federal and state land managers, private persons, political subdivisions of the state, and small businesses will not bear any direct incremental costs from the proposed rule changes. However, because the proposed rule requires both better tracking of emissions, better management of smoke, and public education and notification, benefits are expected to accrue to the public, particularly to populations living close to the burns. Specifically, there is potential for incremental benefits arising from better planning and implementation of measures which increase burn efficiency, prevent wildfires, improve visibility, and reduce smoke impacts to both the general public and more sensitive segments of the population.

F/SLMs currently pay for two full-time positions to work with ADEQ at an estimated annual value of \$120,000 at ADEQ. Office space and equipment are provided by ADEQ. ADEQ currently supports one full-time position for the smoke management program. Although implementing this amended rule may require minimally increased planning and evaluation time, ADEQ does not expect to need additional employees to handle the workload. This increased workload, together with administrative costs associated with making burn information publicly available and conducting public awareness programs, are all that comprise the incremental impact to ADEQ. Thus, ADEQ judges that the costs to the agency are minimal.

The incremental impact of the proposed changes to Article 15 is based on the rule's new requirements, and are expected to result in minimal economic impact to F/SLMs and ADEQ. For example, F/SLMs will have to provide more information about their prescribed burns, including emission reduction techniques and non-burning alternatives. They will also be encouraged to attend annual meetings for program evaluation and the establishment of annual emissions goals, and will be looked to for the development of long-term projections of future prescribed fire and wildland fire use activities. The information provided by F/SLMS will be used by ADEQ to assess visibility impairment and other air quality concerns. Additional compliance costs include those associated with the incorporation of additional emission reduction and smoke management techniques.

Together, these rule changes are expected to improve the state's smoke management program, which could lead to improvements in air quality through reduction and better management of burns. Evidence shows that exposure to criteria pollutants, either to individual pollutants such as particulate matter (PM), or collectively to a variety of pollutants, is associated with increased mortality. The positive correlation is most closely related to ambient air concentrations of PM. Human health effects of PM, for example, include premature mortality, bronchitis, new asthma cases and exacerbated asthma in existing individuals, increased hospital admissions, lower and upper respiratory illness, shortness of breath, respiratory symptoms, restricted activity days, and lost days of work. Other health effects ascribed to exposure to PM include changes in pulmonary function, chronic respiratory diseases (other than chronic bronchitis), morphological changes, neonatal mortality, cancer, altered host defense mechanisms, and non-asthma respiratory emergency room visits. Estimated economic values have been assigned to death and other adverse health effects. For example, a statistical death has been estimated to cost \$6.3 million (in year 2000 dollars), chronic bronchitis due to PM costs \$260,000 per patient, mortality life years lost is valued at \$293,000 per each life year, and work days lost due to PM is worth about \$83 per day. (EPA, *The Benefits and Costs of the Clean Air Act 1990-2010*, Office of Air and Radiation, Office of Policy, November 1999, Table 5-1.)

F. Reduction of Impacts to Small Businesses for R18-2-602 and Article 15

These rules create minimal increased compliance costs for ADEQ to administer the open burning and prescribed forestry burning programs. ADEQ considered each of the methods prescribed in A.R.S. § 41-1035 for reducing the impact on small businesses. Likewise, it considered each of the methods prescribed in A.R.S. § 41-1055(B)(5)(c). For example, A.R.S. § 41-1035 requires agencies implementing rules to reduce the impacts on small businesses by using certain methods where legal and feasible. Methods that may be used include the following: (1) exempt them from any or all rule requirements, (2) establish performance standards which could replace more costly design or operational requirements, or (3) institute reduced compliance or reporting requirements.

ADEQ cannot provide additional regulatory relief for small businesses applying for open burning permits. As the agency does not charge fees for open burning permits, ADEQ expects that the proposed R18-2-602's reporting requirement (on forms developed by ADEQ) will create minimal economic impacts to individual persons or small businesses. The rule procedures have been kept as simple and straightforward as possible. Article 15 does not directly impact small businesses as it applies primarily to public entities.

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9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David Lillie, Economist
Address: ADEQ
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4461 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number)
Fax: (602) 771-2366

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Time: October 20, 2003, 1:30 p.m.
Place: Yuma Public Works, Training Room
155 W. 14th Street
Yuma, AZ 85364

Time: October 21, 2003, 1:30 p.m.
Place: Casa Grande Parks & Recreation Office, Armadillo Room
440 E. Florence Blvd.
Casa Grande, AZ 85222

Time: October 22, 2003, 1:30 p.m.
Place: Show Low City Hall, Council Chambers
200 W. Cooley
Show Low, AZ 85901

Time: October 23, 2003, 1:30 p.m.
Place: Flagstaff City-Coconino County Public Library
300 W. Aspen
Flagstaff, AZ 86001

Nature: Public hearings on proposed rules with opportunity for formal comments on the record. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

Close of comment: October 24, 2003, 5:00 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

Section

R18-2-602. Unlawful Open Burning

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

Section

- R18-2-1501. Definitions
- R18-2-1502. Applicability
- R18-2-1503. Annual Registration, Program Evaluation and Planning for Prescribed Burns
- R18-2-1504. Prescribed Burn Plan Contents
- R18-2-1505. Prescribed Burn Requests and Authorization
- R18-2-1506. Smoke Dispersion Evaluation
- R18-2-1507. Prescribed Burn Accomplishment; ADEQ Recordkeeping; Wildfire Reporting
- R18-2-1508. Prescribed Natural Fires; Wildland Fire Use; Plan; Authorization; Monitoring; Interagency Consultation; Status Reporting
- R18-2-1509. Emission Reduction Techniques; ~~BMP~~
- R18-2-1510. Smoke Management Techniques
- ~~R18-2-1510.~~ R18-2-1511. Monitoring
- ~~R18-2-1511.~~ R18-2-1512. Burner Qualifications
- ~~R18-2-1512.~~ R18-2-1513. Public Notification and Awareness Program; Regional Coordination
- ~~R18-2-1514.~~ Oversight
- ~~R18-2-1513.~~ R18-2-1514. Surveillance and Enforcement
- R18-2-1515. Forms; Electronic Copies; Information Transfers

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

R18-2-602. Unlawful Open Burning

- ~~A.~~ Notwithstanding the provisions of any other rule in this Chapter, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow or maintain any open outdoor fire.
- ~~B.~~ "Open outdoor fire," as used in this rule, means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. "Flue," as used in this rule, means any duct or passage for air, gases or the like, such as a stack or chimney.
- ~~C.~~ The following fires are excepted from the provisions of this rule:
 - 1. Fires used only for cooking of food or for providing warmth for human beings or for recreational purposes or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.
 - 2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.
 - 3. Fires set by or permitted by the state entomologist or county agricultural agents of the county for the purpose of disease and pest prevention.
 - 4. Fires set by or permitted by the federal government or any of its departments, agencies or agents, the state or any of its agencies, departments or political subdivisions, for the purpose of watershed rehabilitation or control through vegetative manipulation.
- ~~D.~~ Permission for the setting of any fire given by a public officer in the performance of official duty under subsections (C)(2), (3), or (4) shall be given, in writing, and a copy of such written permission shall be transmitted immediately to the Director of the Department of Environmental Quality and the control officer, if any, of the county, district or region in which such fire is allowed. The setting of any such fire shall be constructed in a manner and at such time as approved by the Director, unless doing so would defeat the purpose of the exemption.
- ~~E.~~ The following fires may be excepted from the provisions of this Section when permitted in writing by the Director of the Department of Environmental Quality or the control officer of the county, district or region in which such fire is allowed:
 - 1. Fires set for the disposal of dangerous materials where there is no safe alternative method of disposal:
 - a. "Dangerous material" is any substance or combination of substances which is able or likely to inflict bodily harm or property loss unless neutralized, consumed or otherwise disposed of in a controlled and safe manner.
 - b. Fires set for the disposal of dangerous materials shall be permitted only when there is no safe alternative method of disposal, and when the burning of such materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts which will endanger health or safety.
 - 2. Open outdoor fires for the disposal of ordinary household trash in an approved waste burner in nonurban areas of less than 100 well spread out dwelling units per square mile where no refuse collection and disposal service is available:
 - a. An "approved waste burner" is an incinerator constructed of fire resistant material with a cover or screen which is closed when in use having openings in the sides or top no greater than 1 inch in diameter.
 - b. Open burning of the following materials is forbidden: Garbage resulting from the processing, storage, service or consumption of food; asphalt shingles; tar paper; plastic and rubber products (such as waste crankcase oil, transmission oil and oil filters); transformer oils; and hazardous material containers including those that contained inorganic pesticides, lead, cadmium, mercury, or arsenic compounds.

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- F.** The Director of the Department of Environmental Quality or the air pollution control officer, if any, of the county, district, or region may delegate the authority for the issuance of allowable open burning permits to responsible local officers. Such permits shall contain conditions limiting the manner and the time of the setting of such fires as specified in the Arizona Guidelines for Open Burning and shall contain a provision that all burning be extinguished at the discretion of the Director or his authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment which could adversely affect public safety, or periods when smoke is blown into populated areas so as to create a public nuisance. Any local officer delegated the authority for issuance of open burning permits shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set an open fire in the event that an order for extinguishing of open burning is issued.
- G.** Nothing in this rule is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation.
- A.** In addition to the definitions contained in A.R.S. § 49-501, in this Section:
1. "Agricultural Burning" means burning of vegetative materials related to the production and harvesting of crops and raising of animals for the purpose of marketing for profit, or providing a livelihood, but not including the burning of household waste or prohibited materials. Burning may be conducted in fields, piles, ditch banks, fence rows or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.
 2. "Approved waste burner" means an incinerator constructed of fire resistant material with a cover or screen which is closed when in use having openings in the sides or top no greater than one inch in diameter.
 3. "Class I Area" means any one of the Arizona mandatory federal class I areas defined in A.R.S. § 49-401.01.
 4. "Construction burning" means burning of wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but not including the burning of household waste or prohibited materials.
 5. "Dangerous material" is any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed or otherwise disposed of in a controlled and safe manner.
 6. "Delegated authority" means any of the following:
 - a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
 - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (a).
 7. "Director" means the Director of the Department of Environmental Quality, or his designee.
 8. "Emission reduction techniques" are techniques for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit or area burned.
 9. "Flue," as used in this subsection, means any duct or passage for air or combustion gases, such as a stack or chimney.
 10. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.
 11. "Independent authority to permit fires" means the authority of a county to permit fires by a rule adopted pursuant to Arizona Revised Statutes, Title 49, Chapter 3, Article 3. Maricopa, Pima, and Pinal counties have independent authority to permit fires.
 12. "Open outdoor fire or open burning" means the combustion of material of any type outdoors, in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed and construction burning. Purposes for fires can include prevention of a fire hazard, instruction in the methods of fighting fires, watershed rehabilitation, disease and pest prevention.
 13. "Prohibited materials" means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
 14. "Residential burning" means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but not including burning of household waste or prohibited materials.
 15. "Prescribed burning" has the same meaning as in R18-2-1501.
- B.** Unlawful Open Burning. Notwithstanding any other rule in this Chapter, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.

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- C. Open Outdoor Fires Exempt From a Permit.** The following fires do not require an open burning permit from the Director or a delegated authority:
1. Fires used only for:
 - a. Cooking of food;
 - b. Providing warmth for human beings;
 - c. Recreational purposes;
 - d. Branding of animals;
 - e. Orchard heaters for the purpose of frost protection in farming or nursery operations; and
 - f. The proper disposal of flags under 4 U.S.C. 8.
 2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of fire control of an active wildfire.
 3. Fires set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in organized, area-wide control of epidemics or infestations affecting livestock or crops.
 4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies or agents, the state or any of its agencies, departments or political subdivisions, pursuant to Article 15 of this Chapter.
- D. Open Outdoor Fires Requiring a Permit.**
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
 - a. Construction burning;
 - b. Agricultural burning;
 - c. Residential burning;
 - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
 - e. Any fire set or permitted by a public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires, unless such fire is exempt from the permit requirement under subsection (C)(3);
 - f. Open outdoor fires of dangerous material under subsection (E); and
 - g. Open outdoor fires of household waste under subsection (F).
 2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.
 3. Open outdoor fire permits issued under this Section shall include:
 - a. A list of the materials that may be burned under the permit;
 - b. A means of contacting the person authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
 - c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
 - i. Year round: start ignition no earlier than one hour after sunrise; and
 - ii. Year round: fire must be extinguished two hours before sunset.
 - d. A requirement that all open burning shall be conducted only during atmospheric conditions which:
 - i. Prevent dispersion of smoke into populated areas;
 - ii. Prevent visibility impairment on traveled roads or at airports that results in a safety hazard;
 - iii. Do not create a public nuisance or adversely affect public safety;
 - iv. Do not cause an adverse impact to visibility in a Class I area; and
 - v. Do not cause uncontrollable spreading of the fire;
 - e. A listing of the types of actions that shall be utilized to minimize fire emissions including any emission reduction techniques;
 - f. A reporting requirement that shall be met by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or in an annual report to the Director or delegated authority due on March 31 for the previous calendar year:
 - i. The date of the burn;
 - ii. The type and quantity of fuel burned for each date open burning occurred;
 - iii. The fire type, such as pile or windrow, for each date open burning occurred; and
 - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns.
 - g. A requirement that the person conducting the open burn notify the local fire-fighting agency, or if none is in existence, the state forester, prior to commencement of open burning;
 - h. A requirement that each open outdoor fire be started using items that do not cause the production of black smoke;
 - i. A requirement that the fire shall be attended at all times until it is completely extinguished;
 - j. A requirement that fire extinguishing equipment must be on-site for the duration of the burn;

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- k. A requirement that the burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
- l. A requirement that the burner must have a copy of the burn permit on-site during open burning;
- m. A requirement that no open burning shall be conducted when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;
- n. A requirement that no open burning shall be conducted when any stage air pollution episode is declared under R18-2-220.
- o. A statement that the Director, or any other public officer may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or during periods of extreme fire danger; and
- p. A copy of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
- 4. The Director or a delegated authority shall not issue an open burning permit under this Section:
 - a. That would allow the burning of prohibited materials other than under a permit for the burning of dangerous materials;
 - b. If the applicant has applied for a permit under this Section to burn dangerous materials which are also hazardous waste under 40 CFR 261, but does not have a permit for the burning of hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
 - c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance approval under A.R.S. § 49-763.01(A).
- E. Open Outdoor Fires of Dangerous Material. Fires set for the disposal of dangerous materials are allowed by the provisions of this Section, when the materials are too dangerous to store and transport, as permitted in writing by the Director. Permits issued shall contain all provisions in subsection (D)(3) except for subsections (e) and (f). Fires set for the disposal of dangerous materials shall be permitted only when there is no safe alternative method of disposal, and when the burning of such materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F. Open Outdoor Fires of Household Waste. Open outdoor fires for the disposal of household waste are allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. Permits issued shall contain all provisions in subsection (D)(3) except for subsections (e) and (f). Open outdoor fires of household waste shall be burned in an approved waste burner and shall either:
 - 1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
 - 2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G. Permits Issued by a Delegated Authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not permit its own open burning activity. Authority for issuance of permits to burn dangerous material under subsection (E) shall be retained by the Director and not delegated. A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:
 - 1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
 - 2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire in the event that an order for extinguishing of open burning is issued; and
 - 3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (f).
- H. The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I. Nothing in this Section is intended to permit any practice which is a violation of any statute, ordinance, rule, or regulation.

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

- 1. "ADEQ" means the Department of Environmental Quality.
- 2. "Annual Emissions Goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.

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2. ~~"BMP" means best management practices as described in R18-2-1509.~~
3. "Burn Plan" means the ADEQ form that includes information on the conditions under which the burn will occur with details of the burn and smoke management prescriptions.
- 3-4. "Burn prescription" means, with regard to a burn project, the pre-determined area, intensity of heat, and rate of spread fuel and weather conditions required to attain planned resource management objectives.
- 4-5. "Burn project" means an active or planned prescribed burn, including a ~~prescribed natural fire~~ wildland fire use incident.
5. ~~"Class I Area" means a mandatory area designated pursuant to Section 169A of the Clean Air Act Amendments of 1990.~~
6. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
7. "Emission reduction techniques (ERT)" means techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
- 7-8. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
 - a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. ~~United States Soil Conservation Service.~~ Natural Resources Conservation Services
- 8-9. "F/SLM" means a federal land manager or a state land manager.
- 9-10. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
- 10-11. "Mop-up" means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
- 11-12. "National Wildfire Coordinating Group" means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and that has established standardized inter-agency training courses and qualifications for fire management positions.
13. "Non-burning Alternatives to Fire" are techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, ecosystem restoration, etc.). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
- 12-14. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
- 13-15. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn prescription conditions and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning ~~includes~~ does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602. A prescribed fire may be ignited either by a trained fire specialist or by natural causes such as lightning.
- 14-16. "Prescribed Fire Manager" means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
15. ~~"Prescribed natural fire" means a wildland fire that is ignited by natural causes such as lightning rather than by a trained fire specialist, that is subsequently allowed to continue burning using the same controls and for the same planned resource management objectives as prescribed burning.~~
- 16-17. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
18. "Smoke Management Techniques" (SMT) means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height or density of smoke.
- 17-19. "Smoke management unit" means any of ~~the~~ the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outlines are determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into ~~the~~ the smoke management units is on file with ADEQ.
- 18-20. "State land manager (SLM)" means any department, agency, or political subdivision of the state government ~~that is responsible for wildland management including the following:~~
 - a. State Land Department.

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- b. Department of Transportation,
- c. Department of Game and Fish, and
- d. Parks Department.

19. ~~21.~~ "Wildfire" means an unplanned wildland fire subject to appropriate control measures that does not meet resource management objectives and that may threaten life, property, public health, or the ecosystem. Wildfires include those incidents where suppression may be limited for safety, economic, or resource limitations.
20. "Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.
22. "Wildland fire use" means a wildland fire that is ignited by natural causes, such as lightning, that is subsequently managed using the same controls and for the same planned resource management objectives as prescribed burning.

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- ~~B.C.~~ The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally-managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- ~~C.D.~~ Notwithstanding subsection (B), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.
- E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

R18-2-1503. Annual Registration, Program Evaluation and Planning for Prescribed Burns

- A. Each F/SLM shall register annually with ADEQ; on a form prescribed by ADEQ, all planned burn projects, including areas ~~considered for potential prescribed natural fires planned for wildland fire use, for the following year.~~
- ~~C.B.~~ Each planned year extends from ~~August~~ January 1 of the registration year to ~~July~~ December 31 of the same ~~following~~ year. Each F/SLM shall use best efforts to register before ~~August~~ December 31 and ~~no later than January 31~~ of each year.
- ~~B.C.~~ A F/SLM shall ~~provide~~ include the following information on the registration form:
1. The F/SLM's name, address, and business telephone number;
 2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM ~~or Indian tribe~~;
 3. All prescribed burn projects and potential ~~prescribed natural fire~~ wildland fire use areas planned for the next year; ~~and~~
 4. By prescribed burn project, maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area and planned use of emission reduction techniques to support the annual emissions goal;
 5. By prescribed burn project, planned use of any smoke management techniques;
 6. By area planned for wildland fire use, maximum project and annual acres to be burned, maximum daily acres to be burned, and a map of project area, fuel types and loading within the planned area;
 - ~~4.7.~~ A list of all burn projects that were completed during the previous year;
 8. By area to be treated using non-burning alternatives to fire, project area for treatment, treatment type, fuel types to be treated, activity fuel loading to support the annual emissions goal; and
 9. The area treated using non-burning alternatives to fire utilized during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.
- D. After consultation with the F/SLM, ADEQ may request additional information ~~related to tracking burn projects for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting utilizing ERTs, and non-burning alternatives to fire.~~
- E. A F/SLM may amend a registration at any time ~~with a written submission to ADEQ. ADEQ shall approve a new prescribed burn even if the F/SLM has failed to amend a registration if the F/SLM has complied with the other provisions of this Article.~~
- F. ADEQ shall accept a facsimile or other electronic methods as a means of complying with the deadline for registration. If electronic means are used ~~a facsimile is submitted~~, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration. ~~If ADEQ and the F/SLMs jointly develop an electronic filing and reporting system, the original paper form may be waived, and ADEQ shall notify all F/SLMs of this change.~~
- ~~G.~~ No later than 14 days before a F/SLM requests permission to proceed with a registered burn project other than a prescribed natural fire, the F/SLM shall submit a Burn Plan to ADEQ, as described in R18-2-1504. A Burn Plan for a prescribed natural fire shall be submitted as prescribed by R18-2-1508.

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- G.** ADEQ shall hold an annual meeting after January 31 and prior to April 1 of each year between ADEQ and F/SLMs for program evaluation and to cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.
- H.** At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.

R18-2-1504. Prescribed Burn Plan Contents

- ~~A.~~ Each F/SLM planning a prescribed burn, ~~other than a prescribed natural fire~~, shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. The information supplied on the Burn Plan Form are considered binding conditions under which the burn shall be conducted. Burn Plans shall be maintained by ADEQ until notification from the F/SLM of the completion of the project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. The F/SLM shall provide the following information on the "Burn Plan" form To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan:
1. An emergency telephone number that is answered 24 hours a day;
 2. Burn prescription;
 3. Smoke management prescription;
 4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
 5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
 - 5-6. A map depicting the potential impact of the smoke unless waived either verbally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
 - 6-7. Modeling of smoke impacts unless waived either verbally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. ~~Air quality modeling for these areas is mandatory unless waived either verbally or in writing by ADEQ.~~ In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
 - 7-8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
 - 8-9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.
- B.** ~~A Burn Plan shall be submitted for a prescribed natural fire as prescribed by R18-2-1508.~~

R18-2-1505. Prescribed Burn Requests and Authorization

- A.** Each F/SLM planning a prescribed burn, ~~other than a prescribed natural fire~~, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. ~~The F/SLM shall include the following information on the Daily Burn Request form shall include:~~
1. The contact information of the F/SLM conducting the burn;
 2. Each day of the burn;
 - 2-3. The area to be burned ~~per on that day~~ with reference to the Burn Plan, including size, ~~and~~ legal location to the section and latitude/longitude to the minute;
 4. Projected smoke impacts;
 - 3-5. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
- B.** After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process. ~~This information may include same day on-site and area meteorological, smoke dispersion, or air quality measurements.~~
- C.** The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
- D.** An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
- ~~D-1.~~ ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.

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2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request was submitted, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.
3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM. If ADEQ does not communicate its decision, or a confirmation that the Burn Request was received, by 10 p.m., the burn is deemed approved.
- ~~E.~~ Except as provided in subsection (D), an F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ.
- ~~F.E.~~ If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall cease ignitions and take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary, unless after After consultation with ADEQ, the smoke management prescription or burn plan may be is modified.
- ~~E.~~ The F/SLM is responsible for appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.
- ~~G.~~ Burn authorization for prescribed natural fires shall be as prescribed by R18-2-1508.
- ~~H.~~ The F/SLM in whose jurisdiction a wildfire occurs shall report all wildfires greater than 100 acres on a daily basis to ADEQ. The F/SLM shall include in the report the location, estimated control date, and estimated incident size of each wildfire. The F/SLM shall provide information on projected smoke and air quality impacts and on estimated control size upon request by ADEQ.

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted pursuant to R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active ~~prescribed natural fires~~ wildland fire use incidents, active multiple-day burns, and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;
9. Protection of the national visibility goal for Class I Areas pursuant to § 169A(a)(1) of the Act and 40 CFR 51.309; and
- ~~10. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts; and~~
- ~~10-11.~~ Minimization of smoke impacts in Class I Areas, roads or highways, airports, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas.
- ~~12. Protection of the National Ambient Air Quality Standards.~~

R18-2-1507. Prescribed Burn Accomplishment; ADEQ Recordkeeping; Wildfire Reporting

- A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burning. The F/SLM shall include the following information on the Burn Accomplishment form:
 1. Any known conditions or circumstances that could impact the Daily Burn decision process;
 2. The ~~subsequent date, location, fuel type, fuel loading and acreage accomplishments;~~
 3. The BMP ERTs and SMTs for emission reduction described in R18-2-1509 and R18-2-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- ~~B.~~ For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2 p.m. of the business day following the approved burning.
- ~~C.B.~~ The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- ~~D.C.~~ ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.
- ~~D.~~ The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeded the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

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R18-2-1508. ~~Prescribed Natural Fires; Wildland Fire Use; Plan; Authorization; Monitoring; Inter-agency Consultation; Status Reporting~~

- A. ~~In order for ADEQ to participate in the wildland fire use decision-making process, the A~~ F/SLM shall notify ADEQ as soon as practicable of any ~~potential wildland fire use incident prescribed natural fire when it is~~ projected to attain ~~or attaining~~ a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B. For each ~~wildland fire use incident prescribed natural fire~~ that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn ~~prescribed natural fire~~ Plan in a format approved by ADEQ ~~in cooperation with the F/SLM~~. The F/SLM shall submit the Wildland Fire Use Burn ~~prescribed natural fire~~ Plan to ADEQ as soon as practicable but no later than 72 hours after the ~~wildland fire use incident prescribed natural fire is declared or under consideration for such designation~~ ~~1st observed~~. The F/SLM shall include the following information in the Wildland Fire Use Burn ~~prescribed natural fire~~ Plan:
1. An emergency telephone number that is answered 24 hours a day;
 2. Anticipated burn prescription and anticipated emissions;
 3. Anticipated smoke management prescription;
 - ~~3-4.~~ The estimated daily anticipated growth in the number of acres, quantity and type of fuel to be potentially burned;
 - ~~4-5.~~ The anticipated maximum allowable perimeter or size with map;
 - ~~5-6.~~ The type or types of fuel involved; Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function or other indicators of fire resiliency;
 - ~~6-7.~~ The anticipated duration of the wildland fire use incident ~~prescribed natural fire;~~
 - ~~7-8.~~ The anticipated long-range weather trends for the site ~~onsite;~~
 - ~~8-9.~~ A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the ~~wildland fire use incident burn site,~~ with smoke-sensitive areas delineated. Mapping is mandatory unless waived either verbally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; ~~The map shall use the standard agency scale for that F/SLM; and~~
 - ~~9-10.~~ Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.
- C. ADEQ shall approve or disapprove a Wildland Fire Use Burn ~~prescribed natural fire~~ Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn ~~prescribed natural fire~~ Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. ~~If ADEQ fails to respond to the submittal of the Wildland fire use prescribed natural fire Plan, approval of the prescribed natural fire may be assumed by the F/SLM.~~ Approval by ADEQ of a Wildland Fire Use Burn ~~prescribed natural fire~~ Plan shall be binding upon ADEQ for the duration of the ~~wildland fire use incident prescribed natural fire project,~~ unless smoke from the incident ~~prescribed natural fire~~ creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and ~~the development of develop~~ a joint action plan for reducing further smoke impacts.
- D. The F/SLM shall submit a Daily Status Report for each ~~wildland fire use incident prescribed natural fire~~ to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels ~~perimeter increases~~. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the ~~wildland fire use incident prescribed natural fire~~ in the Daily Status Report.
- E. The F/SLM shall consult with ADEQ prior to initiating man-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency man-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.
- F. The F/SLM is responsible for appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.

R18-2-1509. ~~Emission Reduction Techniques; BMP~~

- A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques ~~BMP for emission reduction~~ as are feasible subject to economic, technical and safety feasibility criteria, and land management objectives. ~~for the specific burn and shall include the BMP in the Burn Accomplishment submitted pursuant to R18-2-1507.~~
- B. ~~The following measures are considered~~ Emission Reduction Techniques include ~~BMP:~~
1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales or public firewood access, when economically feasible. ~~When allowing public firewood access, provide information on the adverse impacts of using green or wet wood as fuel;~~
 - ~~2. Burning in seasons characterized by meteorological conditions that allow for good smoke dispersion, especially March 15 through September 15;~~
 2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;

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3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks with short duration impacts;
4. ~~Igniting burns under good to excellent ventilation conditions and suspending operations under poor smoke dispersion conditions;~~
5. ~~Considering smoke impacts on local community activities and land users;~~
6. ~~4. Burning only fuels essential fuels to meet resource management objectives;~~
7. ~~5. Minimizing duff consumption and smoldering by burning under conditions of high through fuel moisture of duff and litter considerations;~~
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
8. ~~7. Minimizing dirt soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;~~
8. Burning fuels in piles;
9. ~~Burning piles when other burns are not feasible, such as when snow or rain is present;~~
9. Using a backing fire in grass fuels;
10. ~~Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;~~
10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated pursuant to manufacturer specifications and meeting applicable state or local opacity requirements;
11. ~~Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;~~
11. Extinguishing or mopping-up of smoldering fuels;
12. ~~Using chunking~~ Chunking of piles and other consolidations of burning material to enhance flaming, fuel consumption and to minimize smoke production;
13. ~~Implementing maintenance burning in a periodic rotation mimicking natural fire cycles to reduce excessive fuel accumulations and subsequent excessive smoke production through smoldering or wildfire;~~
13. Burn before litter fall;
14. ~~Using prescribed natural fires and unplanned ignitions; and~~
14. Burn before green-up of fuels;
15. Managing smoke impacts as follows:
 - a. ~~Limiting smoke impacts to roads, highways, and airports to the amounts, frequencies, and durations consistent with any guidance provided by highway and airport personnel;~~
 - b. ~~Using appropriate signing if smoke will impact any roadways;~~
 - c. ~~Notifying control towers if smoke will intrude in any air traffic control zone;~~
 - d. ~~Determining nighttime impacts and taking appropriate precautions; and~~
 - e. ~~Contacting appropriate authorities as needed regarding smoke or visibility impacts.~~
15. Burn before recently cut large fuels cure in areas with activity; and
16. Burn just prior to precipitation to reduce fuel smoldering and consumption.

R18-2-1510. Smoke Management Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical and safety feasibility criteria, and land management objectives.**
- B. Smoke Management Techniques include:**
 1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
 2. Igniting burns under good-to-excellent ventilation conditions;
 3. Suspending operations under poor smoke dispersion conditions;
 4. Considering smoke impacts on local community activities and land users;
 5. Burning piles when other burns are not feasible, such as when snow or rain is present;
 6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
 7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
 8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
 9. When allowing public firewood access, provide information on the adverse impacts of using green or wet wood as fuel;
 10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations which could result in excessive smoke production in a wildfire; and
 11. Using wildland fire use strategies to shift smoke into more favorable smoke dispersion seasons.

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~~R18-2-1510, R18-2-1511, Monitoring~~

- A. ADEQ may require a F/SLM to monitor ~~weather and~~ air quality before or during a prescribed burn ~~or a excluding wild-land fire use incident prescribed natural fires, which are governed by R18-2-1508, if necessary to accurately predict assess~~ smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference method as well as other techniques.
- B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM planning to make a change to any long-term established remote automated weather station shall give ADEQ notice and an opportunity to comment before making the change.
- ~~B-C.~~ A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, a carbon monoxide, or ozone non-attainment area, or other smoke-sensitive area:
1. Smoke plume measurements, using a format supplied by ADEQ; and
 - ~~1-2.~~ The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, ~~or~~ and stability; and
 2. Smoke plume measurements, using a format supplied by ADEQ.
In lieu of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction and stability.
- ~~C-D.~~ An F/SLM shall make monitoring information required pursuant to subsection (B)(C) available to ADEQ on the business day following the burn ignition.
- ~~D.~~ After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ, if necessary to accurately predict smoke impacts.
- E. The F/SLM shall keep on file for one year following the burn date any monitoring information required pursuant to this Section.

~~R18-2-1511, R18-2-1512, Burner Qualifications~~

- A. All ~~burns~~ burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques ~~to the minimum level as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.~~
- B. A Prescribed Fire ~~Manager~~ Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:
1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course ~~dedicated to address-~~ ing smoke management; or
 2. Attendance at an ADEQ-approved smoke management workshop.

~~R18-2-1512, R18-2-1513, Public Notification and Awareness Program; Regional Coordination~~

- ~~A.~~ At the Director's discretion, The Director shall conduct a public education and awareness program may be conducted by ADEQ in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. If conducted, the The program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.
- ~~B.~~ ADEQ shall make annual registration, prescribed burn approval, wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

~~R18-2-1514, Oversight~~

- ~~A.~~ An F/SLM planning to make a change to any long-term established remote automated weather station shall give ADEQ notice and an opportunity to comment before making the change.
- ~~B.~~ On or before August 15 of each year, each F/SLM shall submit to ADEQ a report generally describing each of the following:
1. The emissions reductions for each project from the previous year as a result of using BMP. Emissions reductions may be estimated using methods and emission factors developed jointly by ADEQ and F/SLMs;
 2. The smoke management cost estimates for each active project from the previous year including estimates for monitoring, training, applying emission reduction techniques, research, and compliance with the requirements of this Article; and
 3. Any research on or development of innovative techniques for emission reductions.

~~R18-2-1513, R18-2-1514, Surveillance and Enforcement~~

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data ~~described pursuant to R18-2-1505 as well as~~ matching burn approval with actual conditions, and smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.

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- B.** ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C.** ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D.** Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation pursuant to A.R.S. § 49-463.

R18-2-1515. Forms; Electronic Copies; Information Transfers

- A.** ADEQ shall make available on paper and in electronically-readable format any form required to be developed by ADEQ and completed by a F/SLM.
- B.** After consultation with the F/SLM, ADEQ may require each F/SLM to provide data in a manner that ~~allows for and~~ facilitates electronic transfers of information.